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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/625,710      | 07/25/2000  | Alfred E. Keller     | 1856-00301          | 6545             |

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DAVID W. WESTPHAL  
CONOCOPHILLIPS COMPNAY  
P.O. BOX 1267  
PONCA CITY, OK 74602-1267

EXAMINER

DOROSHENK, ALEXA A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1764

DATE MAILED: 06/30/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/625,710

Applicant(s)

KELLER, ALFRED E.

Examiner

Alexa A. Doroshenk

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-12, 15-17, 21-23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-12, 15-17, 21-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 8, 15, 17, 21, 22 and 25 continue to be rejected under 35 U.S.C. 103(a) as being unpatentable over De Jong et al. (5,720,901) in view of Kilianny et al. (5,512,260) as presented in paragraph 3 of Paper No. 16.

3. Newly amended Claim 23 is also rejected under 35 U.S.C. 103(a) as being unpatentable over De Jong et al. (5,720,901) in view of Kilianny et al. (5,512,260).

De Jong et al. disclose wherein catalyst is rhodium and such a catalyst is capable of catalyzing the claimed reactions.

4. Claims 9, 11 and 12 continue to be rejected under 35 U.S.C. 103(a) as being unpatentable over De Jong et al. (5,720,901) in view of Kilianny et al. (5,512,260) and Heck et al. (4,844,837) as presented in paragraph 4 of Paper No. 16.

5. Claim 10 continued to be rejected under 35 U.S.C. 103(a) as being unpatentable over De Jong et al. (5,720,901) in view of Kilianny et al. (5,512,260) and Dubois et al. (5,472,920) as presented in paragraph 5 of Paper No. 16.

6. Claim 16 continues to be rejected under 35 U.S.C. 103(a) as being unpatentable over De Jong et al. (5,720,901) in view of Kilianny et al. (5,512,260) and Goetsch et al. (5,654,491) as presented in paragraph 6 of Paper No. 16.

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7. Claims 26-28 continue to be rejected under 35 U.S.C. 103(a) as being unpatentable over De Jong et al. (5,720,901) in view of Heisel et al. (5,676,921) as presented in paragraph 7 of Paper No. 16.

***Response to Arguments***

35 USC 112, Second Paragraph

The rejection of claim 23 under 35 USC 112, second paragraph is withdrawn due to applicant's amendment to the claim.

35 USC 103(a)

Applicant argues that since the exemplary process of De Jong et al. does not use H<sub>2</sub>S and there is no "strict requirement for H<sub>2</sub>S in the feed, it would not be reasonable for the Examiner to then assume that elemental sulfur necessarily results from the process".

The examiner respectfully disagrees. One example does not preclude the combination of the references, especially when the primary reference states that hydrogen sulfide is a suitable compound which can be used (col. 5, lines 5-9).

Applicant argues that the ppm of sulfur in the feed stream of De Jong et al. is lower than what would function properly in the Kiliany et al. and Jeisel et al. reference and therefore the combination of references is improper.

The examiner notes that this is a mere assertion and that the burden of proof is on applicant to provide evidence that such a combination would not function. No evidence has been provided.

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Applicant argues that the catalyst of De Jong et al. does not catalyze the partial oxidation of H<sub>2</sub>S.

The examiner notes that the catalyst is "capable" of partial oxidation of H<sub>2</sub>S. It is held that, despite the process disclosed by De Jong et al., that rhodium is capable of such a reaction. As evidence, see D'Souza et al. (4,233,276) (col. 5, lines 30-35 and col. 6, lines 58-64).

Applicant argues process differences between the references and the claimed apparatus.

It is held that such differences do not result in a patentable distinction in an apparatus claim. An apparatus claim covers what a device is not what a device does. MPEP 2114.

Applicant argues that De Jong et al. does not teach wherein the cooling unit is in the desulfurization unit.

Though De Jong et al. teaches a cooling means prior to a desulfurization means, the claim is rejected by the combination of De Jong et al. and Kilianny et al. Kilianny et al. teaches a sulfur condenser and such a condensing device inherently has a cooling zone in order to achieve condensing.

### **Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexa A. Doroshenk whose telephone number is 703-305-0074. The examiner can normally be reached on Monday - Thursday from 9:00 AM - 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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June 25, 2003



David Cakalov  
Supervisory Patent Examiner  
Technology Center 1764